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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

8 CHANDRA ALVIN SHANKAR, No. C-13-1017 EMC (pr)  
9 Plaintiff,

## ORDER OF DISMISSAL

11 R. GROUNDS, Warden, *et al.*  
12 Defendants.

## I. INTRODUCTION

15 Chandra Alvin Shankar filed this *pro se* civil rights action under 42 U.S.C. § 1983,  
16 complaining that his constitutional rights were violated in connection with prison disciplinary  
17 proceedings. The Court reviewed the civil rights complaint pursuant to 28 U.S.C. § 1915A and  
18 dismissed it with leave to amend. In the order of dismissal with leave to amend, the Court explained  
19 that, “[d]ue to Mr. Shankar’s failure to identify the discipline, if any, that was imposed on him, the  
20 Court cannot determine whether a claim for a due process violation has been stated.” Docket # 6 at  
21 3. The Court also explained that he needed to link defendants to his claim. Mr. Shankar then filed  
22 an amended complaint, which is now before the Court for review pursuant to 28 U.S.C. § 1915A.

## II. BACKGROUND

24 In his amended complaint, Mr. Shankar alleges that his constitutional rights were violated in  
25 connection with the prison disciplinary proceedings for a rule violation report charging him with  
26 possession of a controlled substance for distribution. He alleges that, after he was found guilty at a  
27 disciplinary hearing, the following punishment was imposed on him: 180 days loss of good time

1 credits, a nine-month term in the segregated housing unit, one year of random drug testing, one year  
2 of substance abuse addition classes, one year loss of visiting privileges, and non-contact visits for  
3 two years. *See* Docket # 7 at 2. In his amended complaint, he alleges that he was denied his right to  
4 call a witness without explanation, denied his right to an effective investigative employee, denied a  
5 staff assistant, and denied his right to appeal the disciplinary findings. He requests that the Court  
6 vacate the finding of guilt, order a new hearing, and award money damages. *See* Docket # 1 at 3, 11;  
7 Docket #7 at 3.

### 8                   **III. DISCUSSION**

9                   A federal court must engage in a preliminary screening of any case in which a prisoner seeks  
10 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.  
11 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims  
12 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
13 monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b). *Pro*  
14 *se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699  
15 (9th Cir. 1990).

16                   To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right  
17 secured by the Constitution or laws of the United States was violated and (2) that the violation was  
18 committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48  
19 (1988).

20                   The Court's order of dismissal with leave to amend required Mr. Shankar to identify the  
21 discipline imposed so that it could be determined whether a due process claim was stated. In his  
22 amended complaint, he described the discipline as including a time credit forfeiture. Although the  
23 discipline he identified makes it clear that he could state a due process claim, that same information  
24 shows another problem with this case. Specifically, it is now clear that his civil rights action is, at  
25 best, premature. The fact that the discipline imposed included the forfeiture of time credits makes a  
26 critical difference for Mr. Shankar because a successful challenge to the disciplinary decision would,  
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1 by restoring those forfeited time credits, entitle him to a speedier release from imprisonment. As  
2 explained below, the *Heck* rule bars Mr. Shankar's action for damages at this time, and the only way  
3 he may challenge the disciplinary decision in federal court is in a petition for writ of habeas corpus.

4 The case of *Heck v. Humphrey*, 512 U.S. 477 (1994), held that a plaintiff cannot bring a civil  
5 rights action for damages for a wrongful conviction or sentence unless that conviction or sentence  
6 already has been determined to be wrongful. *See id.* at 486-87. A conviction or sentence may be  
7 determined to be wrongful by, for example, being reversed on appeal or being set aside when a state  
8 or federal court issues a writ of habeas corpus. *See id.* The *Heck* rule also prevents a person from  
9 bringing an action that -- even if it does not directly challenge the conviction or sentence -- would  
10 imply that the conviction or sentence is invalid.

11 *Heck* bars a claim of unconstitutional deprivation of time credits because such a claim  
12 necessarily calls into question the lawfulness of the plaintiff's continuing confinement, i.e., it  
13 implicates the duration of the plaintiff's sentence. *See Sheldon v. Hundley*, 83 F.3d 231, 233 (8th  
14 Cir. 1996); *cf. Ramirez v. Galaza*, 334 F.3d 850, 858-59 (9th Cir. 2003) (where a claim would, if  
15 successful, "necessarily accelerate" the prisoner's release on parole, *Heck* applies). *Heck* also bars a  
16 claim for using the wrong *Wolff v. McDonnell*, 418 U.S. 539 (1974), procedures in a disciplinary  
17 hearing that resulted in the deprivation of time credits if "the nature of the challenge to the  
18 procedures [is] such as necessarily to imply the invalidity of the judgment." *Edwards v. Balisok*,  
19 520 U.S. 641, 645 (1997). The practical importance of this rule is that a prisoner cannot attack the  
20 disciplinary decision that affects the duration of his confinement *in* a civil rights action for damages;  
21 it must have been successfully attacked *before* the civil rights action for damages is filed. Here, the  
22 request for damages for the allegedly wrongful disciplinary decision would, if successful, imply the  
23 invalidity of the discipline imposed. The claim for damages must be dismissed.<sup>1</sup> If Plaintiff wishes  
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25 <sup>1</sup> Plaintiff's claim that some prison officials should be liable for failing to properly process his  
26 inmate appeals is not actionable here. Regardless of whether *Heck* bars the claims against persons who  
27 deprived him of his due process rights in connection with the disciplinary proceeding, Plaintiff has no  
claim against prison officials who did no more than fail to grant his inmate appeals concerning the  
matter. *See Ramirez*, 334 F.3d at 860 (prisoner's claimed loss of a liberty interest in the processing of

1 to challenge the disciplinary decision that resulted in the credit forfeiture, he must do so in a petition  
2 for writ of habeas corpus, but not until he has first exhausted his state judicial remedies.

3 Mr. Shankar's request for the Court to order that the disciplinary decision that affects the  
4 duration of his confinement be vacated cannot be considered in this § 1983 civil rights action. A  
5 petition for writ of habeas corpus is the exclusive method by which he may challenge the duration of  
6 his confinement. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). If Mr. Shankar wishes to  
7 attempt to have the disciplinary decision that resulted in the credit forfeiture set aside, he must do so  
8 in a petition for writ of habeas corpus, but not until he has first exhausted his state judicial remedies.

9 **IV. CONCLUSION**

10 For the foregoing reasons, this action is **DISMISSED**. This dismissal is without prejudice to  
11 Mr. Shankar filing a habeas petition challenging the disciplinary decision and without prejudice to  
12 him filing a civil action for damages if the disciplinary decision is ever set aside.

13 The Clerk shall close the file.

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15 IT IS SO ORDERED.

17 Dated: October 9, 2013

  
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19 EDWARD M. CHEN  
20 United States District Judge

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26 his appeals does not violate due process because prisoners lack a separate constitutional entitlement to  
27 a specific prison grievance system).

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